



**Ohio Senate Local Government Committee
November 19, 2024
Opponent Testimony on House Bill 93**

**E. Rod Davisson, Esq., City Administrator, Obetz, Ohio;
Ohio Municipal League Representative**

Chair O'Brien, Vice Chair Gavorone, Ranking Member DeMora, and Members of the Senate Committee:

Thank you for the opportunity to testify today. My name is Rod Davisson, and I am the City Administrator of Obetz, an attorney, and a representative of the Ohio Municipal League, which serves over 700 municipalities across our state. I appreciate the chance to present our strong opposition to House Bill 93 and explain why this legislation poses significant risks to Ohio's municipalities, residents, and the state's broader policy priorities.

I previously testified in opposition to this bill before the Ohio House State and Local Government Committee. For your reference, I have included my House testimony, which outlines the foundational reasons for my opposition. Today, I want to build on that testimony by presenting additional information and emphasizing and clarifying our concerns. This bill's potential impacts on housing affordability, municipal operations, and Ohio's broader public policy goals deserve careful consideration and action.

I. MAKING H.B. 93 LAW WOULD EXACERBATE OHIO'S HOUSING CRISIS

Ohio is facing a well-documented housing crisis, as highlighted in the Senate Housing Crisis Report. I contributed to shaping this report through my Senator, Michele Reynolds, who chaired the Select Committee. The report underscores the urgent need to reduce barriers to affordable housing while supporting infrastructure investment.

H.B. 93 threatens to exacerbate this crisis. By making it more difficult for municipalities to collect unpaid utility bills, municipalities would be forced to recover those financial losses by increasing water rates; or perhaps more importantly, tap fees—charges levied on developers for new housing connections to water and sewer systems. These fees are a critical revenue source, and increasing them would directly raise the cost of housing development, making it harder to build affordable housing. This would disproportionately harm low-income families and worsen the state's housing affordability challenges. We operate in an environment where even a few

thousand dollars added to the cost of a home can make the difference between a family being able to purchase the home or being priced out entirely.

The proposed bill undermines the Senate's own housing policy goals, sending a contradictory message to municipalities and developers alike. Instead of creating barriers, we should focus on policies that support affordable housing and sustainable infrastructure.

II. H.B. 93 WOULD DRAIN MUNICIPAL UTILITY FUNDS AND DISRUPT CRITICAL SERVICES

Revenues from water and sewer utilities are segregated into enterprise funds and must be used exclusively for operational costs, maintenance, and infrastructure upgrades. These funds are not interchangeable with general fund revenues and are already stretched thin in many municipalities.

Removing or complicating lien authority may force municipalities to rely on litigation to recover unpaid bills. Litigation is not only costly but significantly delays recovery, further straining these enterprise funds. Every dollar spent on legal fees or delayed collection reduces the funds available for vital infrastructure maintenance, service delivery, and long-term improvements. This creates a downward spiral of deferred maintenance, higher costs, and reduced service quality, harming the very residents the utilities aim to serve.

III. H.B. 93 SHIFTS PRIVATE BUSINESS RISKS ONTO TAXPAYERS

H.B. 93 fundamentally shifts financial risk from private businesses—landlords—onto the general public. Landlords operate as for-profit entities and have multiple tools to mitigate the risk of unpaid utility bills, including direct contracts with tenants, lease enforcement, deposits, and evictions. Additionally, landlords can absorb unpaid utility costs as business losses, which may qualify for favorable tax treatment.

In contrast, municipal utilities are public entities that cannot generate profit. Their revenues are strictly allocated for operations, maintenance, and infrastructure needs. Shifting the burden of private business losses onto municipalities forces taxpayers and utility ratepayers to bear the financial burden, undermining the public trust and the fiscal stability of public utilities.

This policy not only creates inequity but also seems counter to the mission of the Ohio Legislature, which should prioritize fairness and protect public resources over private profit-making enterprises.

IV. H.B. 93 VIOLATES MUNICIPALITIES' CONSTITUTIONAL RIGHTS TO GOVERN UTILITIES

Proposed legislation from time to time is said to violate municipal "Home Rule" authority. To be clear, in this instance we are not referring to the general Home Rule power derived from Article XVIII, Section 3 of the constitution; but rather House Bill 93 represents an unconstitutional infringement on the powers granted to municipalities under Article XVIII, **Section 4** of the Ohio Constitution. This provision explicitly grants municipalities the authority to "acquire, construct,

own, lease, and operate" public utilities and to "regulate the rates and charges therefor." Importantly, **this authority is self-executing, meaning it does not require statutory authorization and cannot be limited by legislative enactments.** The Ohio courts have consistently upheld this principle, making it clear that the General Assembly cannot impose restrictions or limitations on municipal utility operations.

Key Takeaways from Case Law

Self-Executing Nature of Article XVIII, Section 4:

City of Cleveland v. Village of Cuyahoga Heights (1947) and Pfau v. City of Cincinnati (1943) firmly establish that the powers granted to municipalities under Section 4 are self-executing, meaning they do not require legislative enactment to be exercised. These powers cannot be limited or restricted by the General Assembly.

Exclusion from Legislative Regulation:

The General Assembly lacks authority to impose restrictions on municipal utility operations, as affirmed in Yoby v. Cleveland (2020), Swank v. Village of Shiloh (1957), and Ottawa Cty. Bd. of Comms. v. Marblehead (1995). Any legislative enactment conflicting with a municipality's right to operate utilities, set rates, or enforce contracts is unconstitutional.

Unconstitutionality of Legislative Interference:

Cases like City of Grandview Heights v. Redick (1955) and Village of Euclid v. Camp Wise Ass'n (1921) clarify that even long-standing statutes attempting to limit municipal powers under Section 4 are unenforceable. These decisions reiterate the unassailable nature of municipal utility powers.

Rate-Setting and Contractual Authority:

Municipalities have the exclusive right to set rates and contract for utility services, as affirmed in Alcorn v. Cincinnati Traction Co. (1925). Any legislative attempt to regulate rates, impose conditions, or limit contractual freedoms directly conflicts with the Constitution.

Necessary and Incidental Rights:

In State ex rel. Sweeney v. Michell (1933), the courts confirmed that the power to operate a utility inherently includes the necessary and indispensable rights to contract and take other operational actions. This recognition further shields municipal utilities from legislative oversight.

Implications for Current Legislation

- **Legislative Limitations:** Any statute, like House Bill 93, that seeks to impose procedural or substantive restrictions on how municipalities operate their utilities or recover unpaid charges would directly conflict with the self-executing powers of Article XVIII, Section 4.
- **Inherent Rights:** Municipalities' rights to enforce utility payments, including through liens or rate-setting, are integral to their constitutional authority and cannot be regulated away by the General Assembly.
- **Judicial Precedent:** These cases provide a robust legal framework to challenge any state law that seeks to limit municipal utility operations.
- **Lien Restrictions:** By requiring municipalities to meet specific conditions, such as proving a direct contract with owner-occupants, H.B. 93 infringes on municipalities' established rights to enforce utility payments.
- **Procedural Mandates:** The bill's notification and appeal requirements attempt to regulate how municipalities collect unpaid charges, usurping local discretion in utility management.
- **Rate-Setting and Financial Autonomy:** These restrictions undermine municipalities' ability to manage their utilities in a fiscally responsible manner, violating their constitutional authority to regulate rates and charges.

The General Assembly is without authority to impose the restrictions outlined in H.B. 93. Article XVIII, Section 4 provides municipalities with plenary powers to operate and manage utilities without interference. The courts have repeatedly affirmed that any legislative attempt to restrict, limit, or otherwise interfere with these powers is unconstitutional. House Bill 93 should be rejected as an impermissible overreach into constitutionally protected municipal authority

V. PRACTICAL SOLUTIONS EXIST TO ADDRESS H.B. 93'S CONCERNS WITHOUT JEOPARDIZING MUNICIPAL FINANCES

Rather than enacting H.B. 93, the Legislature should consider practical alternatives that address the root issues without shifting financial risk onto the public. To be consistent with the existing enabling legislation and to preserve the constitutional authority of municipalities to manage utilities, we suggest the following ideas and language:

- **Dual Billing**
 - **Proposed Language:** "Municipalities may, at their discretion, implement a dual billing system whereby utility bills are issued to both tenants and property owners to enhance transparency and payment compliance. Nothing in this section shall be construed to limit or alter the municipality's authority to certify liens for unpaid utility charges."
 - **Intent:** Provides municipalities the option to use dual billing but does not mandate it, preserving their autonomy.
- **2. Utility Fees in Rental Agreements**

- Proposed Language: "The state encourages property owners to include utility charges as part of rental agreements with tenants. Municipalities may offer incentives, such as streamlined billing processes, to landlords who assume responsibility for utility payments on behalf of their tenants."
 - Intent: Encourages landlords to adopt this practice voluntarily and allows municipalities to create incentives without mandating changes.
- Municipal Utility Payment Plans
 - Proposed Language: "Municipalities are authorized to establish payment plan options for utility customers experiencing financial hardship. Such payment plans shall be designed to secure timely payments while minimizing disruptions to essential utility services."
 - Intent: Empowers municipalities to design payment plans without imposing state-mandated requirements.
- State-Supported Mediation Programs
 - Proposed Language: "The State of Ohio shall establish and fund a mediation program to assist municipalities, property owners, and tenants in resolving disputes related to unpaid utility charges. Participation in such mediation shall be voluntary and shall not affect a municipality's authority to recover unpaid charges through liens or other legal means."
 - Intent: Offers a state-funded option for dispute resolution without interfering with municipal operations.
- Education and Outreach
 - Proposed Language: "The State of Ohio, in partnership with municipal associations, landlord organizations, and tenant advocacy groups, shall develop and disseminate educational materials regarding utility payment responsibilities, available payment options, and the lien certification process. Participation in this program by municipalities shall be voluntary."
 - Intent: Provides support for outreach efforts without mandating municipal participation.
- Incentives for Timely Payment
 - Proposed Language: "Municipalities are authorized to establish programs offering discounts or credits to utility customers who maintain timely payment records. Such programs shall be at the discretion of the municipality and funded through locally determined sources."
 - Intent: Grants municipalities flexibility to design incentive programs suited to their financial and operational contexts.
- Strengthening Existing Collection Mechanisms

- Proposed Language: "The State of Ohio shall provide technical assistance and training resources to municipalities seeking to enhance the efficiency and fairness of their utility collection processes. Adoption of such recommendations shall remain at the sole discretion of the municipality."
- Intent: Supports municipalities without imposing procedural mandates or restrictions.
- General Savings Clause
 - Proposed Language: "Nothing in this legislation shall be construed to limit or infringe upon the authority granted to municipalities under Article XVIII, Section 4 of the Ohio Constitution to acquire, construct, own, lease, operate, or regulate public utilities and the rates and charges therefor."
 - Intent: Explicitly protects municipalities' constitutional authority, ensuring the enabling legislation cannot be misinterpreted as restrictive.
- Key Features of the Enabling Legislation
 - Voluntary Adoption: Each provision offers options municipalities may choose to implement based on local needs and priorities.
 - Support, Not Control: Focuses on providing tools, resources, and incentives rather than imposing obligations.
 - Constitutional Compliance: Includes clear language to respect and preserve the self-executing powers granted to municipalities under Article XVIII, Section 4. Dual Billing: Require utility bills to be sent to both landlords and tenants, improving transparency and accountability.

These solutions may avoid the unintended consequences of H.B. 93. They balance landlord protections with municipal needs, all while aligning with Ohio's constitutional and public policy framework.

Conclusion

House Bill 93 imposes severe financial and operational burdens on municipalities, exacerbates Ohio's housing crisis, and undermines constitutional principles. The Ohio Municipal League strongly urges the Senate to reject this legislation and instead work collaboratively with municipalities to develop balanced solutions that protect all parties—landlords, tenants, taxpayers, and municipalities alike.

Thank you for your time and consideration. I am happy to answer any questions from the committee.